

FILED

AUG 12 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

NO. 28609-6-III

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

RESPONDENT,

v.

COREY CHRISTMAN

APPELLANT.

RESPONDENT'S BRIEF

**D. ANGUS LEE
PROSECUTING ATTORNEY
Carole L. Highland, WSBA #20504
Deputy Prosecuting Attorney
Attorney for Respondent**

**PO BOX 37
EPHRATA WA 98823
(509)754-2011**

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ASSIGNMENTS OF ERROR

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I. STATEMENT OF THE CASE

A. FACTS

On September 7, 2008, a group of approximately eight young people gathered at the sand dunes in Moses Lake, Grant County, Washington. RP 166, 175, 198-199, 312-313. The group in general was smoking weed in addition to drinking beer and wine coolers. RP 167, 192. The appellant, Corey Christman, brought nine and one half (9 ½) Methadone pills that he had obtained from his step-mother. RP 85, 168, 170. During the course of the party, which lasted for only an hour or two, the appellant initially gave Mr. Mulder two of the Methadone pills, and then three more when Mr. Mulder told him he didn't feel any effects from the drug. When Mr. Mulder came back a third time and asked for more pills, the appellant directed him over to his vehicle and his shirt where the remaining four and one half pills of Methadone were located. RP 199, 85, 168-172. The next day Mr. Christman found that all 9 ½ of his Methadone pills were gone. RP 85.

After the party, several people, including Mr. Mulder, left in a car and went to Justin Sibley's house where Mr. Mulder remained for only a "half hour or so". RP 190, 201-202, 207. Both Justin Sibley and Julie

Collier testified that no one consumed any alcohol or drugs in the car on the way to Mr. Sibley's house. RP 190, 201-202. Julie Collier, Randal Collier, Kelsey Peterson and Justin Pires all testified that no drugs or alcohol were consumed by anyone at Justin Sibley's home. RP 202, 212, 207, 321.

Mr. Mulder then walked approximately one block from the Sibley home to the home of the Colliers in order to sleep in their garage. RP 203. Mr. Mulder had nowhere else to stay and had slept in the Collier garage before. RP 213. Mr. Collier gave Mr. Mulder food and water, but testified that the victim was given neither drugs nor alcohol. RP 214. Tesschia Zyph, a resident at the Collier home, likewise testified that the victim had been given food, but neither drugs nor alcohol. RP 219. The next morning, at approximately 10:30-11:00, Julie Collier and her sister went out to the garage to check on Mr. Mulder. RP 203-204. Ryan Mulder was laying there "barely breathing". After splashing water on the victim, they called an ambulance. RP 204, 219-220. Mr. Mulder died two days later on September 10th, 2008 at Deaconess Medical Center where he had been flown from Samaritan Hospital. RP 128, 129. Deputy Dobson testified that the only items of evidentiary value located in the garage on

September 8, 2008 were some shoes and some other possible items of clothing. RP 106. Likewise, Detective Messer testified that the only items recovered from the garage were a pair of black tennis shoes. RP 125. There was no indication of any drugs and/or alcohol located in the Collier garage. RP 106, 120-127.

Dr. John Howard, a forensic pathologist and one of the two medical examiners for Spokane County, testified that Mr. Mulder had not died of natural causes. RP 239, 260.

Dr. Howard testified that in this particular case, it was possible to quantify the amount of Methadone in Mr. Mulder's body as .23 milligrams per liter and that ingestion of 9 ½ pills of methadone was consistent with that level. RP 270-271, 274. Dr. Howard testified that Mr. Mulder's death had been caused by hypoxic encephalopathy due to the use of Methadone, methamphetamine and alcohol and that aspiration pneumonitis contributed to his death. RP 258. He further opined that it was not possible to separate any methamphetamine, alcohol or Methadone from each other, but that .23 milligrams per liter could be lethal, and had shown to be in other cases. RP 284. In response to an enquiry as to high a level of toxicity .23 would be, Doctor Howard responded:

This is a level that based on other cases and studies, there have been many studies and case reports nationwide, it is a level that is pharmacologically active, meaning it would have – the Methadone would have an observable or demonstrable affect on the central nervous system, and it is a level that has been associated with clinical toxicity, meaning patients have been in distress or bad difficulties or problems based on this, and there are well reported cases of death where Methadone was identified as the cause of death, and as the drug alone, not with any other drug or any other contribution to the death, simply Methadone toxicity at levels lower than the .23. So this is a level higher than has been identified in other cases of causing death by itself or producing clinical signs of toxicity. RP 271.

Later when he was asked, if within reasonable medical certainty, did Methadone cause the death of Ryan Mulder, Dr. Howard responded “Yes”. RP 273,

II. ARGUMENT

1. The evidence adduced at trial proved beyond a reasonable doubt that the delivery of nine and one half Methadone pills by the appellant Corey Christman to Ryan Mulder (which Mr. Mulder ingested) caused the death of Ryan Mulder.

a. The State presented sufficient evidence under the plain meaning of the statute that the appellant’s delivery of Methadone resulted in Ryan Mulder’s death.

Dr. Howard testified that while it was not possible to separate the

substances which the deceased had ingested on the night of September 7th, 2008, he himself was aware of much lower levels causing toxicity and death. And in response to a direct enquiry, Dr. Howard testified that, with medical certainty, the Methadone had caused the death of Ryan Mulder.

Testimony was consistent throughout the trial that during the one to two hour party at the sand dunes, most of the young people were smoking weed and most, if not all, were drinking beer or wine coolers. Given the small size of the group, Mr. Christman had to be aware of Mr. Mulder's consumption of other substances during the two direct deliveries consisting of five Methadone to the victim and the indirect delivery of the four and a half remaining Methadone to him during a relatively short period of time. Testimony was also consistent that between the time of the party at the dunes, and the time that an ambulance took Mr. Mulder from the Collier garage, he did not consume any additional alcohol or drugs. In fact he could not be roused by the Collier sisters on the morning of September the 8th, and subsequently died in the hospital two days later.

'In reviewing the sufficiency of the evidence, the question is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of

the crime beyond a reasonable doubt.’ *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993), *State v. Bourne*, 90 Wn.App. 963, 967, 954 P.2d 366 (1998). However, there must be substantial evidence that supports the elements of the crime charged. *State v. Cleman*, 18 Wn.App. 495, 498, 568 P.2d 832 (1977). ‘When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.’ *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A defendant claiming insufficiency of the evidence ‘admits the truth of the State’s evidence and all inferences that can reasonably be drawn therefrom.’ *State v. Myers*, 133 Wn.2d 26, 37, 941 P.2d 1102 (1997).

In determining the sufficiency of the evidence, criminal intent may be inferred from conduct, and circumstantial evidence is not to be considered any less reliable than direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980); *Myers*, 133 Wn.2d at 38. A fact finder is permitted to draw inferences from circumstantial evidence so long as those inferences are rationally related to the proven fact. *State v. Bencivenga*, 137 Wn.2d 703, 707, 974 P.2d 832 (1999). Credibility determinations are for the trier of fact and are not subject to review.

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State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). The reviewing court defers to the trier of fact on issues of credibility, conflicting evidence, and persuasiveness of the evidence. *State v. E.J.Y.*, 113 Wn.App. 940, 952, 55 P.3d 673 (2002), *State v. Walton*, 64 Wn.App. 410, 415-416, 824 P.2d 533 (1992).

- b. Despite Counsel's argument, the statute in question is not unconstitutionally vague as applied to the facts in this case.

The controlled substances homicide statute provides, "A person who unlawfully delivers a controlled substance in violation of RCW 69.401(a)(b) or (c) which controlled substance is subsequently used by the person to whom it was delivered, resulting in the death of the user, is guilty of controlled substances homicide." RCW 69.50.415.

As the testimony of Dr. Howard was unambiguous, appellant's argument fails. Applied to this case, the death of Ryan Mulder occurred as a consequence of the use of the methadone delivered to him by Corey Christman.

Under the due process clause of the United States Constitution, Fourteenth Amendment, a statute is void for vagueness if either: (1) the

that ordinary people can understand what conduct is proscribed”, or (2) the statute “does not provide ascertainable standards of guilt to protect against arbitrary enforcement.” *State v. Watson*, 160 Wn.2d 1, 6, 154 P.3d 909 (2007) quoting *State v. Williams*, 144 Wn.2d 197, 203, 26 P.3d 890 (2001). “(A) statute or condition is presumed constitutional unless the party challenging it proves that it is unconstitutional beyond a reasonable doubt.” *State v. Smith*, 130 Wn.App. 721, 726-727, 123 P.3d 896 (2005). As this case does not involve Mr. Christman’s First Amendment interests, the challenge must be evaluated in the light of the facts of the specific case. *State v. Stevenson*, 128 Wn.App. 179, 188, 114 P.3d 699 (2005), *City of Spokane v. Douglass*, 115 Wn.2d 171, 179, 795 P.2d 693 (1990). As argued *supra*, appellant cannot satisfy the standard required as the unambiguous testimony of the medical examiner was both that studies showed that much lower levels of Methadone had reportedly led to toxicity and death, and that as a matter of reasonable medical certainty, the death of Mr. Mulder was the result of his ingestion of the Methadone. The number of Methadone pills provided by the appellant and the victim’s quantifiable level of Methadone coincide, and directly attribute the toxicity level in the victim to that amount provided by Mr. Christman.

Here the jury heard that the deceased had received 9 ½ Methadone pills from Mr. Christman; that levels lower than the .23 milligrams per liter could be lethal; and that according to Dr. Howard, Methadone had, with medical certainty, caused the death of Ryan Mulder. Had the jury not believed that the Methadone caused the death of the victim beyond a reasonable doubt, they could have found the appellant guilty of the lesser included charge of delivery of a controlled substance. RP 352-353. They chose otherwise. RP 378.

III. CONCLUSION

For the foregoing reasons, the State would respectfully request that the decision of the jury finding the appellant, Corey Christman, guilty of Controlled Substances Homicide in violation of RCW 69.50.415 be upheld.

Submitted this 10th day of August, 2010.

Carole L. Highland

D. ANGUS LEE, Prosecuting Attorney
By: Carole L. Highland, WSBA #20504
Deputy Prosecuting Attorney

